



August 29, 2002

Mr. Jason Martinson
Open Records Coordinator
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-4854

Dear Mr. Martinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167934.

The Texas Parks & Wildlife Department (the "department") received a request for information relating to the Alcoa Inc. Sandow Mine. You state that the department will release some of the requested information. The department claims that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The department raises section 552.101 in conjunction with section 12.0251 of the Parks and Wildlife Code. Section 12.0251 provides in part:

- (a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

¹The department also has raised section 552.111 of the Government Code, but has submitted no arguments in support of that exception. Thus, we do not address section 552.111. See Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating reasons why stated exceptions apply to requested information).

- (1) protected by this code; and
- (2) located on private land that:
 - (A) is subject to a wildlife management plan developed cooperatively with the department for private land; or
 - (B) is the subject of a recommendation report prepared by the department for the landowner.
- (b) The [Parks and Wildlife C]ommission or the department may disclose information described by this section only to the landowner unless:
 - (1) the landowner consents to full or specified partial disclosure of information; and
 - (2) the consent is in writing and attached to the plan or recommendation report.
- (c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a manner that prevents the identification of an individual or specific parcel of land and the landowner.
- (d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.
- (e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing.

Parks & Wild. Code § 12.0251(a)-(e). The department believes that some of the requested information is confidential under section 12.0251.

The department indicates that the information in question relates to the nomination of Alcoa for the Lone Star Land Steward Award. The department states that Attachment B, Alcoa's Application Form, contains excerpts from and information related to a wildlife management plan. The department also informs us that Attachments C, D, and E contain a wildlife

management plan, letters and permits supplementing the plan, and information concerning a related wildlife survey. The submitted information appears to involve animals that are protected by the Parks and Wildlife Code. The department appears to have collected most of this information from a private landowner in connection with a wildlife management plan or a recommendation report prepared by the department for a landowner. Therefore, based on the department's representations and our review of the submitted information, we conclude that Attachments C, D, and E are confidential under section 12.0251 of the Parks and Wildlife Code. We also conclude that any information contained in Attachment B that the department collected from Alcoa in connection with a wildlife management plan or recommendation report also is confidential under section 12.0251. The information that is confidential under section 12.0251 is excepted from disclosure under section 552.101 of the Government Code. The department must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

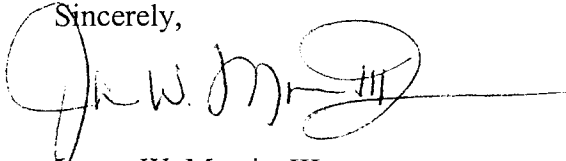
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", followed by a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167934

Enc: Submitted documents

c: Ms. Billie Woods
President
Neighbors for Neighbors
P.O. Box 661
Elgin, Texas 78621
(w/o enclosures)